O/0017/26

TRADE MARKS ACT 1994

IN THE MATTER OF APPLICATION NUMBER UK00004033093
BY WU XIANG
TO REGISTER THE FOLLOWING TRADE MARK:

Oegg

IN CLASS 29

AND

AN OPPOSITION THERETO UNDER NUMBER 447521
BY ALTERNATIVE FOODS LONDON LTD

BACKGROUND AND PLEADINGS

1. On 1 April 2024, Wu Xiang ("the Applicant") applied to register in the UK the trade mark shown on the cover page of this decision. The application was accepted and published for opposition purposes on 19 April 2024 and registration is sought for the following goods:

Class 29	*Eggs; Yolk of eggs; Processed eggs; Quail eggs; Marinated eggs; Hen eggs; Pickled eggs; Birds eggs and egg products; Egg substitutes; Liquid eggs.*

2. On 16 May 2024, Alternative Foods London Ltd ("the Opponent") opposed the application in full under sections 5(2)(b) and 5(3) of the Trade Marks Act 1994 ("the Act").[1] By way of an email dated 5 November 2025, the Opponent withdrew the section 5(3) ground of opposition. Under section 5(2)(b), the Opponent relies upon the following trade mark:

<u>Trade mark number UK00003348834</u>
Representation: Oggs
Filing date: 26 October 2018
Registration date: 18 January 2019
Goods relied upon:

Class 29	*Egg substitutes; Egg whites; Egg yolks; Eggs; Eggs (Powdered -); Frozen eggs; Hen eggs; Liquid eggs; Processed eggs; White of eggs; Yolk of eggs.*
Class 30	*Almond cake; Breakfast cake; Cakes; Chocolate cake; Chocolate cakes; Chocolate covered cakes; Cream cakes; Cupcakes; Deep chocolate cake made with chocolate sponge; Fruit cakes; Sponge cake.*

[1] The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

3. Given its earlier filing date, the Opponent's mark is an earlier mark in accordance with section 6(1) of the Act. In accordance with section 6A of the Act, the Opponent's mark is subject to the proof of use provisions contained therein, however, the Applicant, in its defence and counterstatement, did not request proof of use. Accordingly, the Opponent may rely upon its earlier mark for all the goods listed in the previous paragraph for the purposes of this opposition.

4. Under section 5(2)(b), the Opponent claims that there is a likelihood of confusion on the basis of similarity between the parties' marks and identity and/or high similarity between the parties' respective goods.

5. In its defence and counterstatement, the Applicant denies a likelihood of confusion on account of visual, aural and conceptual differences between the parties' marks. The Applicant did not address the similarity of the parties' respective goods: it simply listed the goods applied for and those relied upon and proceeded to make submissions on the breadth of the Opponent's registration; the Applicant's position on the goods' comparison was clarified at the hearing, which I will return to at the relevant point in my decision.

6. During the evidence rounds, both parties filed evidence in chief, but the Opponent did not file evidence in reply. A hearing took place before me on 10 December 2025. The Opponent was represented by Mr Julius Stobbs of Stobbs (IP) Limited and the Applicant by Mr Ákos Süle.[2] Both parties filed skeleton arguments prior to the hearing.

EVIDENCE AND SUBMISSIONS

7. The Opponent filed evidence in chief in the form of the witness statement of Sonia Amrar dated 2 September 2024 and its corresponding two exhibits (labelled SA-01 and SA-02). Ms Amrar is a Chartered Trade Mark Attorney at Stobbs (IP) Limited, representing the Opponent. The witness statement is simply a vehicle for introducing the exhibits, which contain screenshots from the UK websites of Sainsbury's and

[2] At the commencement of the proceedings, the Applicant was represented by Axis Professionals Ltd. On 26 September 2025, a change of representatives, to Ákos Süle, was recorded on Form TM33.

Waitrose (SA-01) and Brakes and Savona (SA-02) showing the Opponent's goods available for sale and listed under the 'egg' category.

8. The Applicant filed evidence in chief in the form of the witness statement of Wu Xiang dated 3 November 2024 and its corresponding two exhibits (labelled Exhibit 1 and Exhibit 4). Wu Xiang is the Applicant in these proceedings. The witness statement is simply a vehicle for introducing the exhibits, which contain undated photographs described by Wu Xiang as showing participation in exhibitions in the United States.

9. After the evidence rounds had concluded and once the hearing had been scheduled, the Applicant, by way of an email dated 13 October 2025, notified the Tribunal that it had noticed some of its evidence in chief had not been successfully sent. The Applicant requested to file the missing evidence at, or prior to, the hearing. On 18 November 2025, the Tribunal responded, by email, as follows:

> "The Hearing Officer has considered the Applicant's email of 13 October and has responded as follows.
>
> The request to file exhibits that were missing from the Applicant's evidence in chief filed during the evidence rounds is essentially a request to file additional evidence. For such a request to be considered, the Hearing Officer will need to understand the nature of the evidence and consider the materiality of such evidence as well as any prejudice to either party by allowing, or not allowing, it to be filed (the reasons why it was not filed earlier have already been provided).
>
> The Hearing Officer reminds the Applicant that: firstly, a request to file evidence at this stage in proceedings will result in reopening the evidence rounds, given that the Opponent will need to be given an opportunity to file evidence in reply; and secondly, bearing in mind these proceedings now involve only a 5(2)(b) ground of opposition with no request for proof of use, any additional evidence from the Applicant is unlikely to be material to the issues the Hearing Officer has to decide.

If the Applicant still wishes to make a request to file additional evidence, it is directed to file such evidence and to indicate why it is material to the proceedings in advance of the main hearing scheduled for Wednesday 10 December. Any request made, or evidence filed, at the hearing may cause the hearing to be postponed, resulting in wasted time and costs for the Tribunal and the parties."

10. On 26 November 2025, by way of an email to the Tribunal, the Applicant withdrew its request to file its missing evidence.

11. I have taken the entirety of the evidence and the submissions made at the hearing into account in reaching my decision and will refer to them below where necessary.

DECISION

<u>Section 5(2)(b)</u>

Statutory provisions

12. Section 5(2)(b) of the Act is as follows:

> "5. […]
>
> (2) A trade mark shall not be registered if because –
>
> > (a) […]
> >
> > (b) it is similar to an earlier trade mark and is to be registered for goods or services identical with or similar to those for which the earlier trade mark is protected,
>
> there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark."

Relevant case law

13. The following principles are gleaned from the decisions of the Court of Justice of the European Union ("CJEU") in *Sabel BV v Puma AG,* Case C-251/95, *Canon Kabushiki Kaisha v Metro-Goldwyn-Mayer Inc,* Case C-39/97, *Lloyd Schuhfabrik Meyer & Co GmbH v Klijsen Handel B.V.* Case C-342/97, *Marca Mode CV v Adidas AG & Adidas Benelux BV,* Case C-425/98, *Matratzen Concord GmbH v OHIM*, Case C-3/03, *Medion AG v. Thomson Multimedia Sales Germany & Austria GmbH,* Case C-120/04, *Shaker di L. Laudato & C. Sas v OHIM,* Case C-334/05P and *Bimbo SA v OHIM,* Case C-591/12P.

The principles

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa;

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically-linked undertakings, there is a likelihood of confusion.

Comparison of goods

14. The goods to be compared are shown in the table below.

The Opponent's specification	**The Applicant's specification**
Class 29: *Egg substitutes; Egg whites; Egg yolks; Eggs; Eggs (Powdered -); Frozen eggs; Hen eggs; Liquid eggs; Processed eggs; White of eggs; Yolk of eggs.*	Class 29: *Eggs; Yolk of eggs; Processed eggs; Quail eggs; Marinated eggs; Hen eggs; Pickled eggs; Birds eggs and egg products; Egg substitutes; Liquid eggs.*

Class 30: *Almond cake; Breakfast cake; Cakes; Chocolate cake; Chocolate cakes; Chocolate covered cakes; Cream cakes; Cupcakes; Deep chocolate cake made with chocolate sponge; Fruit cakes; Sponge cake.*	

15. At the hearing, Mr Süle confirmed the Applicant's position that all the goods in the application, save for "egg products" are identical to the Opponent's Class 29 goods, but that nonetheless all the Class 29 goods are either identical or highly similar. Since it is the Opponent's position that the parties' Class 29 goods are identical, "egg products" is the only term for me to consider.

16. I do not consider the ordinary meaning of egg products to be 'eggs' in their natural form, but any processed form of eggs whereby the egg has been removed from its shell and prepared in one of various ways. Accordingly, egg products could include processed, powdered, frozen or liquid eggs, all of which appear in the Opponent's specification. In line with *Gérard Meric v OHIM,* Case T-133/05, I find the Applicant's "egg products" identical to the aforementioned terms in the Opponent's specification on the basis the latter are included in the former more general category. For the avoidance of doubt, firstly, my finding would have extended to the entirety of the application had the terms been in contention, and secondly, I do not consider a finding of either high similarity or identity between the goods will make a different to the overall likelihood of confusion finding in this case. Therefore, even if I am wrong on the identity of the goods, they are highly similar.

The average consumer and the purchasing act

17. As the case law cited earlier in my decision indicates, it is necessary for me to determine who the average consumer is for the respective parties' goods. I must then determine the manner in which the goods are likely to be selected by the average consumer. In *Hearst Holdings Inc, Fleischer Studios Inc v A.V.E.L.A Inc, Poeticgem Limited, The Partnership (Trading) Limited, U Wear Limited, J Fox Limited,* [2014] EWHC 439 (Ch), Birss J. described the average consumer in these terms:

> "60. The trade mark questions have to be approached from the point of view of the presumed expectations of the average consumer who is reasonably well informed and reasonably circumspect. The parties were agreed that the relevant person is a legal construct and that the test is to be applied objectively by the court from the point of view of that constructed person. The word "average" denotes that the person is typical. The term "average" does not denote some form of numerical mean, mode or median."

18. The relevant goods are those which are identical, in Class 29. The average consumer is a member of the general public who, paying either a low to medium degree of attention (for eggs, given they are an everyday purchase selected with little consideration) or a medium degree (for the remaining goods in Class 29), will select the goods predominantly visually by self-selection from shelves in physical premises or from webpages online. I do not discount an aural component to the purchase in the event of conversations with retail assistants or word-of-mouth recommendations.

Comparison of marks

19. It is clear from *Sabel*, cited earlier in my decision, that the average consumer normally perceives a trade mark as a whole and does not proceed to analyse its various details. The same case also explains that the visual, aural and conceptual similarities of the trade marks must be assessed by reference to the overall impressions created by the trade marks, bearing in mind their distinctive and dominant components. The CJEU states at paragraph 34 of its judgment in *Bimbo*, that:

> "…it is necessary to ascertain, in each individual case, the overall impression made on the target public by the sign for which registration is sought, by means of, inter alia, an analysis of the components of a sign and of their relevant weight in the perception of the target public, and then, in the light of that overall impression and all factors relevant to the circumstances of the case, to assess the likelihood of confusion."

20. It would be wrong, therefore, to dissect the trade marks artificially, although it is necessary to take into account the distinctive and dominant components of the trade marks and to give due weight to any other features which are not negligible and therefore contribute to the overall impressions created by the marks.

21. The marks to be compared are as follows:

The Opponent's mark	**The Applicant's mark**
Oggs	**Oegg**

22. The Applicant's mark consists of the textual element 'Oegg', presented in title case in a slightly stylised font. The dominant and distinctive element of the mark is the word 'Oegg', with the stylisation playing a lesser role in the overall impression.

23. The Opponent's mark is a word-only mark consisting solely of the textual element 'Oggs', the overall impression residing in that one word.

24. Visually, the marks differ in the final letter (s) in the Opponent's mark and in the second letter (e) and the slightly stylised font in the Applicant's mark, though bearing in mind the overall impression of the mark, the stylisation is minor and holds less weight. In terms of similarity, the marks are each composed of four letters and share the first letter 'O' as well as double 'g', albeit in different positions within the respective marks. Overall, I find a high degree of visual similarity between the marks.

25. The Opponent's mark will be pronounced as one syllable, similarly to the word 'odds' save for a hard 'g' sound in place of the 'dd'. It is possible consumers will pronounce the Applicant's mark in a variety of different ways, though two possibilities were raised by the parties: 'oh-egg' or 'erg', the former suggested by the Applicant and both suggested by the Opponent. Given the word 'oegg' is invented and the spelling

is unusual for the English language, I find it no more likely that consumers will choose one pronunciation over the other. In either scenario, the marks share the hard ‘g’ sound but differ in the sound at the beginning of the marks and in the letter ‘s’ at the end of the Opponent’s mark. I find there to be a medium degree of aural similarity.

26. The Applicant’s position on the conceptual comparison differs to that of the Opponent; I heard detailed submissions from Mr Stobbs and Mr Süle at the hearing. The Applicant submits that ‘Oegg’ evokes the concept of eggs due to the presence of ‘egg’ in the mark but that ‘Oggs’ has no clear meaning and will be perceived simply as a sequence of letters, resulting in conceptual dissimilarity. The Opponent submits that both marks are a play on the word ‘egg/s’ with the presence of the letter ‘O’, and that the letter ‘s’ at the end of its mark merely suggests plurality; the Opponent suggests a high degree of conceptual similarity.

27. In my view, when the marks are used on eggs and egg products, a significant proportion of consumers will see both ‘Oggs’ and ‘Oegg’ as a play on the word ‘egg/s’. Whilst conceptual comparisons are usually done without reference to the goods at issue,[3] the consumer does look to the goods to inform the meaning of the mark, particularly where there is a link between the conceptual meaning of the mark and the goods to which it is affixed;[4] this is the case here. With both marks exhibiting a play on the word ‘egg/s’ I find them conceptually highly similar. If I am wrong and consumers do not notice the play on the word ‘egg/s’ the marks are conceptually neutral on the basis that neither portrays an immediately obvious concept.

Distinctive character of the earlier mark

28. In *Lloyd Schuhfabrik Meyer* the CJEU stated that:

> “22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular

[3] EMILIANA, Case BL O/052/22.
[4] LIGHT VITAMIN, Case BL O/1174/25.

undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *WindsurfingChiemsee v Huber and Attenberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered; the market share held by the mark; how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark; the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking; and statements from chambers of commerce and industry or other trade and professional associations (see *Windsurfing Chiemsee,* paragraph 51)."

29. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctiveness of a mark can be enhanced by virtue of the use that has been made of it.

30. At the hearing, Mr Stobbs confirmed that the Opponent was not pursuing a claim to an enhanced degree of distinctiveness through use on the basis that its evidence is not sufficient for such a finding. As a result, I have only the inherent position to consider.

31. The Opponent's mark consists solely of the one word 'Oggs'. As discussed in the conceptual comparison, 'Oggs' may be seen as a play on the word 'eggs'. Even so, the mark is not a dictionary word and does not describe the goods, it merely alludes to them in a creative way. I find the mark to be inherently distinctive to between a medium and high degree.

Likelihood of confusion

32. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e. a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa. As I mentioned above, it is necessary for me to keep in mind the distinctive character of the Opponent's trade marks, the average consumer for the goods and the nature of the purchasing process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

33. I have found the marks to be visually similar to a high degree and aurally similar to a medium degree. The marks are either conceptually highly similar or neutral, depending on whether the consumer interprets the marks as misspellings of 'egg/s'. I have found the Opponent's mark to have a medium to high degree of inherent distinctive character. I have found the goods to be identical and the average consumer of those goods to be a member of the general public who pays either a low to medium degree of attention (to the selection of eggs) or a medium degree of attention (to the selection of the remaining goods) and selects the goods predominantly visually, though aural considerations are also relevant.

34. The Opponent attests to a likelihood of direct confusion on the basis that consumers will imperfectly recall the marks and mistake one for the other. Direct confusion was described by Iain Purvis QC (as he then was) as involving "no process of reasoning – it is a simple matter of mistaking one mark for another".[5] The Opponent further explains that when consumers recommend either 'Oggs' or 'Oegg' products

[5] *L.A. Sugar Limited v By Back Beat Inc,* BL O/375/10.

they may misremember the exact play on the word ‘egg/s’ but remember that the mark featured the letter ‘O’ at the beginning.

35. The Applicant submits that the different pronunciation of the marks and the visual differences in the marks are sufficient to avoid a likelihood of confusion and that consumers will remember the “different playful variation of the word egg”.[6]

36. When bearing in mind that both marks are four-letter words beginning with ‘O’ and containing a double ‘g’ and are either a similar play on the word ‘egg/s’ or are invented words with no clear concepts to remember them by, I find it likely that consumers will misremember one for the other, particularly when considering the goods are identical. It is likely that consumers will imperfectly recall the marks, and I therefore find there to be a likelihood of direct confusion. I would have come to the same conclusion had the goods been found to be highly similar.

CONCLUSION

37. There is a likelihood of confusion. The opposition succeeds under section 5(2)(b) and the application is refused in its entirety.

COSTS

38. The Opponent has been successful and is entitled to an award of costs in its favour. Bearing in mind the scale set out in Tribunal Practice Notice 1/2023, I award the following:

Official fee	£100[7]
Preparing a notice of opposition and considering the defence	£250

[6] Mr Süle’s skeleton argument dated 8 December 2025.

[7] The Opponent paid a £200 official fee for originally relying also on section 5(3). Given this ground of opposition was withdrawn by the Opponent after the end of the evidence rounds, I have reduced the award.

Preparing evidence and considering the other side's evidence	£400[8]
Preparing for and attending a hearing	£600
Total	**£1350**

39. I therefore order Wu Xiang to pay Alternative Foods London Ltd the sum of £1350. This sum should be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the final determination of the appeal proceedings.

Dated this 13th day of January 2026

MRS E FISHER
For the Registrar

[8] Both parties' evidence was exceptionally light and so I have made an award below the scale minima.